



ALABAMA MUNICIPAL ELECTRIC AUTHORITY

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May 7, 1997

The Honorable John D. Dingell, Ranking Member
Commerce Committee Democratic Office
564 Ford House Office Building
U. S. House of Representatives
Washington, DC 20515

Dear Congressman Dingell:

I appreciate the opportunity to respond to the questions you have posed in your letter of April 10, 1997. You are to be congratulated for seeking input from folks in the electric utility industry. Since the inception of the industry municipal electric utilities have always worked hard to provide the most reliable and low cost electric service to their citizens. The choice to provide this service on a not-for-profit basis has greatly contributed to this sector of the industry being the most cost effective from the consumer point of view.

There has also been a choice available to the citizens to either provide the service themselves or franchise the service to the private sector. This is a choice that should not be lost. Congress needs to assure the people that they will always have that right, no matter what changes are made to this industry in the future. Congress also needs to protect the people from market power abuses. If there is market power there can be no competition!

The following are my responses to your questions:

QUESTION 1 **What are your biggest concerns about retail competition? If retail competition has been adopted by the state(s) you service, or is under active consideration, what position have you taken and why?**

ANSWER(S) 1A The right to have local control is very important. Any legislation should preserve local control and oversight of public power systems. All consumers must benefit if retail competition is to be successful. The possibility of ALL consumers benefiting is a concern.

States and local governments should be allowed to develop their own retail access system if they choose to do so. A big concern is that retail competition will be forced upon us through a federal mandate.

As stated in my introduction, market power is a very serious concern. Any restructuring of the industry must include a series of protections against the establishment and abuse of market power. A key element in mitigating market power is to retain the consumer protection in the Public Utility Holding Company Act (PUHCA). Holding Companies must also be prevented from shifting costs between their affiliates to gain an unfair competitive advantage and additional market power.

Changing the rules during the middle of a game will create serious problems for one of the teams. This is exactly what will happen to Municipals who have used tax-exempt bonds to finance their generation and transmission facilities. Under retail competition, private use restrictions would severely limit the ability of a municipal utility to sell power it generated that became surplus because some of its customers switched to other suppliers. For full competition to occur, public power facilities existing as of a certain date should be exempted from the private use restrictions wherever retail competition has been established.

QUESTION 2 Do you believe Congress should enact legislation mandating retail competition by a date certain and why or why not?

ANSWER No. Congress should not mandate retail competition. Local control is the fundamental right of the people. Local authorities are best able to determine whether retail access policies make sense economically and politically for their area. Local authorities best understand the economic characteristics, history, and trends in their area. They understand the impacts it will have.

QUESTION 3 Some privately owned utilities assert that public power enjoys a broad range of tax-related and other advantages which independently owned utilities (IOUs) do not, and that these would unfairly benefit public power in a competitive retail marketplace. Do you agree? Do IOUs enjoy any benefits public power does not?

ANSWER No, I do not agree. Public power is the not-for-profit segment of the industry. As a result no income tax is paid because there is no profit to tax. Under the Constitution, the Federal Government is not to tax state or local government and vice versa. State and local governments have the right to provide services to the people, if the people want them. Those governments have the right to raise capital to provide the desired services using tax-free bonds. It has been determined that the differential in rates between the Municipals and privately owned utilities is attributable 70% to the not-for-profit decision, 15% due to the use of tax-free bonds and, where applicable, 15% due to the availability of PMA power. These are the main reasons municipal electric systems have lower power cost in addition to the fact municipal systems are operated more efficiently because of local oversight. If an IOU wants to operate on a not-for-profit basis, they could also have lower costs.

Advantages the private utilities have are many. They include the advantages of size, political and financial superiority, market power, and freedom from requirements such as direct customer control, sunshine laws and open meeting and record requirements that both constrain and define public power utilities.

In response to your second question:

- Public power systems pay substantial amounts of taxes and payments in lieu of taxes. According to a 1994 APPA study of the net payments and contributions for 670 public power systems, the median amount was 5.8% of electric operating revenues—identical to the median net payment as percent of operating revenues for IOUs. The payments are property-like taxes, payments in lieu of taxes, and transfers to the general funds. The contributions take the form of free or reduced cost of service to states and cities.
- IOUs do not pay large amounts of taxes. The customers of IOUs pay the taxes (including municipal electric systems that are wholesale customers of IOUs). Private utilities pass taxes through to the customers; they are tax collectors, not taxpayers.
- IOUs enjoy significant tax breaks. From 1954 to 1993, private utilities have benefited from more than \$245 billion in subsidies, including accelerated depreciation, investment tax credits and deferred income taxes. In 1993 alone, these subsidies cost the federal treasury and U. S. taxpayers almost \$11 billion.
- Municipal electric systems are entitled to issue tax-exempt bonds because they are part of state and local governments, just as IOUs are eligible to enjoy certain tax benefits by nature of their being private corporations.

QUESTION 4 If Congress were to mandate retail competition, please provide any recommendations you have with respect to the following issues.

A. Stranded investment: How should IOUs' stranded investment be treated? Does your company face anything similar and, if so, how should it be treated?

ANSWER Recovery at wholesale for the costs of assets rendered uneconomic by competition is unjustified and would impede the development of competitive bulk power markets. Those are contractual arrangements and the provisions of the contracts should prevail. Generally these contracts do not provide for payment of any costs beyond the term of the contract. At the retail level, however, recovery of such costs, including those incurred by the retail entity's wholesale supplier, may be appropriate if retail competition is established. The justification for this stems from the traditional obligation to acquire the resources necessary to serve every customer in the utility's service territory. Recovery of these retail stranded costs should be left to state and local authorities. However, stranded cost will eventually cease to exist.

Private use restrictions on tax-exempt bonds used to finance most generation, transmission and distribution facilities owned by public power systems would create a substantial "stranded investment" for these utilities. These restrictions would severely limit the ability of a municipal utility to sell power it generated that became surplus because some of its customers switched to other suppliers.

The State of Alabama has already passed legislation addressing stranded cost. A copy is attached for your information

B. Reciprocity: Should Congress consider processes barring access to markets in states which have adopted retail competition by generators in states which have not? Which interest would this affect and how?

ANSWER We have no opinion as this is a matter of constitutional law.

C. Local distribution companies (LDC): Should Congress require unbundling of LDC service in order to subject them to competition?

ANSWER No. Ownership and control of the metering and billing functions should remain with the distributing utility. Historically, distributing utilities have been, and should continue to be, responsible for reading and maintaining the meters, as well as the billing functions associated with the meter. If ownership of the meter is separated from the distributing utility, there may be reliability and safety concerns.

Again, thank you for the opportunity to respond to your questions. If I can be of further help, please feel free to call on me.

Sincerely,

A handwritten signature in cursive script, appearing to read "R W Claussen".

Robert W. Claussen
General Manager

Enclosure

cc AMEA Board of Directors